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**COPY MAILED****FEB 26 2004****OFFICE OF PETITIONS**

In re Application of :  
Smalley et al. :  
Application No. 10/635,976 : ON PETITION  
Filed: 7 August, 2003 :  
Attorney's Dckt No. 11321-P012USD14 :

This is a decision on the petition filed under 37 CFR 1.182 on 29 December, 2003, to withdraw the Notice to File Missing Parts Mailed on 20 November, 2003.

The petition is granted.

The above-identified application was filed on 7 August, 2003. On 20 November, 2003, Initial Patent Examination Division mailed a Notice to File Missing Parts of Nonprovisional Application, stating that the oath or declaration was missing, and that the oath or declaration and a surcharge for its late filing must be filed within two (2) months to avoid abandonment.

In response, the present petition was filed on 29 December, 2003. Petitioners assert that an executed oath or declaration was present among the application papers filed on 7 August, 2003. In support, petitioners have supplied a copy of a postcard receipt itemizing the filing of 45 pages of oath or declaration.

While petitioners' postcard receipt does not serve as convincing evidence that the declaration was filed on 7 August, 2003, because it has not been stamped with an "Office-date" by the USPTO, a review of the official file reveals that 45 pages of executed oath or declaration were received in the USPTO on 7 August, 2003.

As an executed oath or declaration was timely received, the Notice mailed on 20 November, 2003, was mailed in error and is **vacated**.

As the petition was necessitated by an error on the part of the Office, the \$130.00 petition fee will be refunded. Furthermore, the surcharge of \$130.00 required by the Notice will be refunded. Both fees will be credited to counsel's deposit account, No. 23-2426, as authorized on the fee transmittal sheet filed on 29 December, 2003.

The application is being forwarded to Technology Center 1700 for examination in due course.

Telephone inquiries concerning this matter may be directed to the undersigned at (703) 308-6918.

  
Douglas I. Wood  
Senior Petitions Attorney  
Office of Petitions